

REMARKS

Applicants thank the Examiner for the detailed Office Action dated 12 June 2007. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Claims 1-39 were pending in the application. Claim 2 is requested to be cancelled without prejudice or disclaimer. Claims 1, 3, 10-11, 13-14, 26, 31, 36-37, and 39 are currently being amended. After amending the claims as set forth above, claims 1 and 3-39 are now pending in this application.

Entry of this amendment is proper under 37 C.F.R. § 1.116 since the amendment: (a) places the application in condition for allowance (for the reasons discussed herein); (b) does not raise any new issues requiring further search and/or consideration; and (c) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to new arguments raised by the Patent Office in the final rejection.

For simplicity and clarity purposes in responding to the Office Action, Applicants' remarks are primarily focused on the rejections applied to the independent claims (*i.e.*, claims 1, 15, 27, 31, and 39) as outlined in the Office Action with the understanding that the dependent claims are patentable for at least the same reasons (and in most cases other reasons) that the independent claims are patentable. Applicants expressly reserve the right to argue the patentability of the dependent claims separately in any future proceedings.

Claim Rejections – 35 U.S.C. § 102***Independent Claims 1, 31 and 39***

On pages 3-4 of the Office Action, independent claims 1, 31, and 39 and various dependent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,662,681 to Nash et al. Applicants respectfully traverse the rejection. Nash et al. does not identically disclose the subject matter recited in independent claims 1, 31, or 39.

Applicants have amended independent claim 1 to include the tamping tube of dependent claim 2. Since dependent claim 2 was not rejected over Nash et al., it is presumed that independent claim 1 is now allowable over Nash et al.

Applicants respectfully submit that Nash et al. does not disclose the combination of elements recited in independent claims 31 and 39, as amended. For example, independent claims 31 and 39 both recite, among other elements, “withdrawing the tamping member from the percutaneous incision,” which is not shown in Nash et al. Instead, the component of Nash et al. that the Patent Office seems to be interpreting as the tamping member – locking member 36 – remains in the patient when the procedure is over.

For the above reasons, Applicants respectfully submit that independent claims 1, 31, and 39 and the claims which are dependent thereon are not anticipated by the cited reference and are patentable.

Double Patenting

Law of Double Patenting

On page 5 of the Office Action, all of the claims were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over copending U.S. Application Nos. 11/130,895, 11/130,688, 11/103,730, 11/103,257. Applicants respectfully note that none of these applications contain allowed claims. Since the claims may change, Applicants will wait to address any potential double patenting issues until Applicants receive an indication that the claims in these applications or the present application have been allowed.

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Applicants respectfully submit that the present Application is in condition for allowance. Applicants request reconsideration and allowance of the pending claims. The Examiner is invited to contact the undersigned by telephone if the Examiner needs anything or if a telephone interview would advance the prosecution of the present application.

Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

Deposit Account No. 08-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 08-2623.

Respectfully submitted,

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